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U.S. Citizenship
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Services

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FILE:



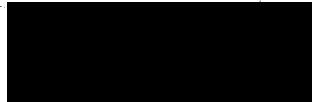
Office: CALIFORNIA SERVICE CENTER

Date: SEP 23 2004

IN RE:

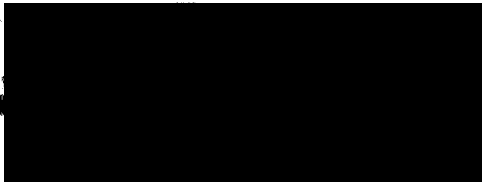
Petitioner:

Beneficiary:



PETITION: Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3)
of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, California Service Center. In connection with the beneficiary's Application to Register Permanent Resident or Adjust Status (Form I-485), the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The revocation is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

Under 8 C.F.R. § 205.2(d), the time allowed for appeals of revocations is 15 days from the service of the notice of revocation, plus an additional three (3) days for the service by mail, or 18 days.

The record indicates that the director issued the decision on March 13, 1998. The director incorrectly notified the petitioner that it had 33 days to file the appeal of the revocation. Although counsel dated the appeal April 6, 1998, Citizenship and Immigration Services (CIS) received it on April 3, 1998, or 21 days after the director issued the decision. Therefore, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official who made the last decision in the proceeding has jurisdiction over a motion, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely file, it must be rejected.

ORDER: The appeal is rejected.